

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 260 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHAVIRSINH SOGARSINH YADAV

Versus

STATE OF GUJARAT

Appearance:

MR MJ BUDDHBHATTI for Petitioner

MR SR DIVETIA APP for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 27/07/98

ORAL JUDGEMENT

Heard learned advocate Mr. Buddhbhatti for the petitioner and Mr. S.R Divetia, learned APP for the respondent-State.

2. Petitioner before this Court is the accused in Criminal Case No. 758 of 1997. The offence punishable

under Sections 447, 143, 148, 506 and 34 (1) IPC had been registered against some persons, including the present petitioner. Petitioner happens to be a security guard and possesses a gun. In the course of investigation, the gun belonging to the petitioner has been seized by the police. Petitioner made an application for recovery of possession of the said gun pending investigation and trial, which was dismissed by the learned Magistrate on 29th August, 1997.

3. Feeling aggrieved, the petitioner preferred Criminal Revision Application No. 259 of 1997 before the learned City Sessions Judge, Ahmedabad which was dismissed on 25th September, 1997. Feeling aggrieved, the petitioner has preferred the present petition.

4. On the facts and in the circumstances of the case, this petition is allowed. The impugned orders of the courts below are set-aside. The petitioner's application for possession of muddamal gun is allowed. The possession of the muddamal gun seized from the petitioner be handed over to him on his furnishing surety for a sum of Rs. 15,000/- to the satisfaction of the learned Magistrate and on his executing a personal bond for the like amount. The petitioner shall retain the possession of gun pending trial, on the following terms and conditions :-

- (a) Pending trial, the petitioner shall not transfer or dispose of the muddamal-gun in any manner whatsoever. Further, petitioner shall not permit any other person to handle the said gun.
- (b) The petitioner shall produce the muddamal gun before the trial Court as and when he is required to do so.
- (c) Petitioner shall maintain the muddamal gun in proper condition.

Rule is made absolute to the aforesaid extent. There shall be no order as to costs. Registry is directed to send the writ forthwith.

Prakash*